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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,266	07/19/2001	Gary D. Jerdee	71163-03	1248

7590 11/17/2004

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/909,266

Applicant(s)

JERDEE ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1 and 22-26 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, as set forth in section 4 of the last Office Action.

Claim Rejections - 35 USC § 103

3. Claims 1 and 22-26 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the cited Peoples patent for the reasons of record.

Response to Arguments

4. Applicant's arguments filed on August 24, 2004, have been fully considered but they are not persuasive.
5. Applicant has not amended the application in an attempt to overcome the above rejections, but merely traverses said rejections. Specifically, applicant traverses the 112, 1st rejection by asserting that the examiner has not considered the specification as a whole (Remarks, paragraph spanning pages 2-3). To the contrary, it is the examiner's position that the teachings of the specification, taken as a whole, do not support the claim limitation of "wherein

the adhesive material is substantially free of polypropylene.” The specification does teach advantages of the inventive copolymers when compared to polypropylene and the working examples of specification do not include polypropylene. However, these teachings are not sufficient for the negative limitation of “substantially free of polypropylene.” Applicant also argues that the examiner’s reliance upon *Ex parte Grasselli* is misplaced, since applicant is not merely relying upon the absence of a positive recitation in the working examples, but also the explicit teaching of the advantages of the present invention over polypropylene. The examiner respectfully disagrees. It is reiterated that a mere teaching of an advantage or improvement of the inventive copolymer over polypropylene cannot be construed to mean an adhesive “substantially free of polypropylene.” In particular, applicant’s claim language of “substantially free of polypropylene” encompasses the presence of some polypropylene. Thus, a blend of a small amount of polypropylene is within the scope of the claim, but a majority blend of polypropylene is not. How does a recitation to advantage of one over the other provide support for some, but not all blends of the two? Therefore, applicant’s arguments are unpersuasive and the enablement rejection is maintained.

6. With respect to the prior art rejection, applicant notes the typographical error of “103(c)” rather than 103(a). The examiner apologizes for this typo but notes that the correct “103(a)” is cited in section 8 of the Office Action mailed October 23, 2003, from which the last Office Action refers back to.

7. Applicant traverses the prior art rejection of the claims by Peoples by asserting the reference fails to teach the inventive ethylene methyl acrylate copolymer blend as an adhesive material located *between the primary and secondary backings* (Remarks, paragraph spanning

pages 3-4). Since applicant's claims require the adhesive material to bind an upper surface of the secondary backing to the bottom surface of the primary backing, applicant asserts the Peoples reference does not anticipate the present claims. The examiner respectfully disagrees.

8. Specifically, Peoples explicitly teaches the inventive polymeric layer (i.e., thermoplastic barrier coating) can be applied directly to the backloops of the tufts in order to bind said tufts in the primary backing (col. 5, lines 12-24). This embodiment of the polymeric layer, as one skilled in the art readily knows, is well known in the art as an adhesive backcoat that binds the tufts securely in a primary backing. Peoples also teaches applying a textile pad or the like over the lower surface of the polymeric layer opposite the carpet face (col. 5, lines 38-43 and col. 10, lines 14-17). One skilled in the art readily recognizes this textile pad as a secondary backing. Thus, Peoples clearly and explicitly teaches the inventive polymeric layer as an adhesive material located between a tufted primary backing and a secondary backing. Therefore, applicant's traversal is unfounded and the 102/103 rejection is maintained.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

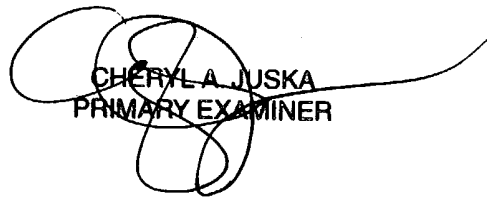
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER